

HOUSE No. 1688

By Ms. Polito of Shrewsbury, petition of Karyn E. Polito and others relative the safety of the children from sexual predators. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Karyn E. Polito	Edward M. Augustus, Jr.
Stephen P. LeDuc	James E. Vallee
Jeffrey Davis Perry	Michael R. Knapik
Richard J. Ross	Stephen M. Brewer
James R. Miceli	Bradley H. Jones, Jr.
Scott P. Brown	

In the Year Two Thousand and Seven.

AN ACT RELATIVE THE SAFETY OF THE CHILDREN IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 178E of Chapter 6 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 striking out subsection (e).

1 SECTION 2. Section 178E of Chapter 6 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 striking subsection (f).

1 SECTION 3. Section 178G of Chapter 6 of the General Laws, as
2 appearing in the 2004 Official Edition, is hereby amended by
3 inserting after the words:— “has been determined by the sentencing
4 court to be a sexually violent predator,” the following words:— “or
5 has been convicted of the rape of a child pursuant to Section 22A of
6 Chapter 265 of the General Laws, as appearing in the 2004 Official
7 Edition”.

1 SECTION 4. Paragraph (a) of Section 29A of Chapter 272 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out, in lines 9-10, the words:— “or by a fine of
4 not less than ten thousand nor more than fifty thousand dollars, or by
5 both such fine and imprisonment” and inserting in place thereof the
6 following words:— “, and whoever, either with knowledge that a
7 person is a child under fourteen years of age or while in possession
8 of such facts that he should have reason to know that such person is
9 a child under fourteen years of age, and with lascivious intent, hires,
10 coerces, solicits or entices, employs, procures, uses, causes, encour-
11 ages, or knowingly permits such child to pose or be exhibited in a
12 state of nudity, for the purpose of representation or reproduction in
13 any visual material, shall be punished by imprisonment in the state
14 prison for a term of not less than ten years nor more than twenty-five
15 years. The provisions of Section 87 of Chapter 276 relating to the
16 power of the court to place certain offenders on probation shall not
17 apply to any person charged with a violation of this section.”

1 SECTION 5. Paragraph (b) of Section 29A of Chapter 272 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out, in lines 7-10, the words:— “shall be pun-
4 ished by imprisonment in the state prison for a term of not less than
5 ten nor more than twenty years, or by a fine of not less than ten
6 thousand nor more than fifty thousand dollars, or by both such fine
7 and imprisonment” and inserting in place thereof the following
8 words:— “shall be punished by imprisonment in the state prison for
9 a term of not less than fifteen nor more than twenty-five years, and
10 whoever, either with knowledge that a person is a child under four-
11 teen years of age or while in possession of such facts that he should
12 have reason to know that such person is a child under fourteen years
13 of age, and hires, coerces, solicits or entices, employs, procures,
14 uses, causes, encourages, or knowingly permits such child to partici-
15 pate or engage in any act that depicts, describes, or represents sexual
16 conduct for the purpose of representation or reproduction in any
17 visual material, or to engage in any live performance involving
18 sexual conduct, shall be punished by imprisonment in the state
19 prison for a term of not less than twenty years nor more than thirty
20 years. The provisions of Section 87 of Chapter 276 relating to the

21 power of the court to place certain offenders on probation shall not
22 apply to any person charged with a violation of this section.”

1 SECTION 6. Section 29A(d) of Chapter 272, as appearing in the
2 2004 Official Edition, is hereby amended by adding, following the
3 word “eighteen” in line 26, the following:— “or under fourteen”.

1 SECTION 7. Paragraph (a) of Section 29B of Chapter 272 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out, in lines 9-13, the words:— “shall be pun-
4 ished in the state prison for a term of not less than ten nor more than
5 twenty years or by a fine of not less than ten thousand nor more than
6 fifty thousand dollars or three times the monetary value of any eco-
7 nomic gain derived from said dissemination, whichever is greater, or
8 by both such fine and imprisonment” and inserting in place thereof
9 the following words:— “for the first offense, shall be punished in the
10 state prison for a term of not less than ten years nor more than
11 twenty years or by a fine of not less than fifty thousand dollars or ten
12 times the monetary value of any economic gain derived from said
13 dissemination, whichever is greater, or by both such fine and impris-
14 onment; a second or subsequent violation of this section shall be
15 punished in the state prison for a term of not less than fifteen years
16 nor more than twenty years.”

1 SECTION 8. Paragraph (b) of Section 29B of Chapter 272 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out, in lines 22-26, the words:— “shall be pun-
4 ished in the state prison for a term of not less than ten nor more than
5 twenty years or by a fine of not less than ten thousand nor more than
6 fifty thousand dollars or three times the monetary value of any eco-
7 nomic gain derived from said dissemination, whichever is greater, or
8 by both such fine and imprisonment” and inserting in place thereof
9 the following words:— “shall be punished in the state prison for a
10 term of not less than ten years nor more than twenty years. The pro-
11 visions of Section 87 of Chapter 276 relating to the power of the
12 court to place certain offenders on probation shall not apply to any
13 person charged with a violation of this section.”

1 SECTION 9. Paragraph (vii) of Section 29C of Chapter 272 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out, in lines in lines 23-32, the words:— “shall
4 be punished by imprisonment in the state prison for not more than
5 five years or in a jail or house of correction for not more than two
6 and one-half years or by a fine of not less than \$1,000 nor more than
7 \$10,000, or by both such fine and imprisonment for the first offense,
8 not less than five years in a state prison or by a fine of not less than
9 \$5,000 nor more than \$20,000, or by both such fine and imprison-
10 ment for the second offense, not less than 10 years in a state prison
11 or by a fine of not less than \$10,000 nor more than \$30,000, or by
12 both such fine and imprisonment for the third and subsequent
13 offenses” and inserting in place thereof the following words:—
14 “shall be punished by imprisonment in the state prison or in a jail or
15 house of correction for a term of not less than two years or by a fine
16 of not less than \$10,000 nor more than \$30,000, or by both such fine
17 and imprisonment for the first offense, not less than five years in a
18 state prison or by a fine of not less than \$50,000 nor more than
19 \$100,000, or by both such fine and imprisonment for the second
20 offense, not less than ten years in a state prison for the third and sub-
21 sequent offenses.”

1 SECTION 10. Paragraph 1 of Section 22A of Chapter 265 of the
2 General Laws, as appearing in the 2004 Official Edition, is hereby
3 amended by striking out, in lines 4-9, the words:— “shall be pun-
4 ished in the state prison for life or for any term of years; and who-
5 ever over the age of eighteen commits a second or subsequent such
6 offense shall be sentenced to the state prison for life or for any term
7 of years, but not less than five years; provided, however, that a pros-
8 ecution commenced under the provisions of this section shall not be
9 placed on file or continued without finding” and inserting in place
10 thereof the following words:— “shall be punished in the state prison
11 for life or for any term of years not less than ten years; and whoever
12 over the age of eighteen commits a second or subsequent such
13 offense shall be sentenced to the state prison for life or for any term
14 not less than twenty years; provided, however, that a prosecution
15 commenced under the provisions of this section shall not be placed
16 on file or continued without finding. The provisions of Section 87 of
17 Chapter 276 relating to the power of the court to place certain

18 offenders on probation shall not apply to any person charged with a
19 violation of this section.”

1 SECTION 11. Section 22A of Chapter 265, as appearing in the
2 2004 Official Edition, is hereby amended by striking out, in lines 12-
3 14, the following:— “but not less than ten years. Whoever over the
4 age of 18 commits a second or subsequent such offense shall be sen-
5 tenced to the state prison for life or for any term of years, but not
6 less than 20 years” and inserting in place thereof the following
7 words: “but not less than twenty years. Whoever over the age of 18
8 commits a second or subsequent such offense shall be sentenced to
9 the state prison for life or for any term of years, but not less than
10 thirty years”.

1 SECTION 12. Said Chapter 265 is hereby amended by adding,
2 following Section 22A, the following new section:—

3 Section 22B. Whoever unlawfully has sexual intercourse or
4 unnatural sexual intercourse with a child under twelve years of age,
5 and compels said child to submit by force and against his will or
6 compels said child to submit by threat of bodily injury, shall be pun-
7 ished by imprisonment in the state prison for life or for any term of
8 years not less than twenty years; and whoever over the age of 18
9 commits a second or subsequent such offense shall be sentenced to
10 the state prison for life or for any term of years not less than thirty
11 years; provided, however, that a prosecution commenced under the
12 provisions of this section shall not be placed on file or continued
13 without finding. The provisions of Section 87 of Chapter 276
14 relating to the power of the court to place certain offenders on proba-
15 tion shall not apply to any person charged with a violation of this
16 section.

17 Whoever commits any offense described in this section while
18 armed with a firearm, rifle, shotgun, machine gun or assault weapon
19 shall be sentenced to the state prison for life or for any term of years,
20 but not less than twenty-five years. Whoever over the age of 18
21 commits a second or subsequent such offense shall be sentenced to
22 the state prison for life or for any term of years, but not less than
23 thirty-five years.

1 SECTION 13. Said Chapter 6 is hereby amended by adding the
2 following section:—

3 Section 178R.

4 (a) No sex offender designated as a level 3 offender convicted of a
5 sex offense involving a child, or any level 1 or level 2 offender who
6 has been convicted of more than one sex offense involving a child,
7 shall establish a primary address within 1,000 feet of the property on
8 which any public or private school, licensed day care center, or any
9 other child care facility is located. In cases where the sex offender
10 has maintained the same primary address from before the time of the
11 convicted crime, the provisions under this paragraph will not be
12 upheld.

13 (b) No sex offender designated as a level 3 offender convicted of
14 a sex offense involving a child, or any level 1 or level 2 offender
15 who has been convicted of more than one sex offense involving a
16 child, shall establish a secondary address within 1,000 feet of the
17 property on which any public or private school, licensed day care
18 center, or any other child care facility is located.

19 (c) No sex offender designated as a level 3 offender convicted of a
20 sex offense involving a child, or any level 1 or level 2 offender who
21 has been convicted of more than one sex offense involving a child,
22 shall establish a primary address within 1,000 feet, or the distance
23 cited by any standing restraining orders, whichever distance is
24 greater, of the property on which the offender's victim or victims
25 have established residency, or the victim's immediate family mem-
26 bers reside. In cases where the sex offender has maintained the same
27 primary address from before the time of the convicted crime, the
28 provisions under this paragraph will not be upheld.

29 (d) No sex offender designated as a level 3 offender convicted of
30 a sex offense involving a child, or any level 1 or level 2 offender
31 who has been convicted of more than one sex offense involving a
32 child, shall establish a secondary address within 1,000 feet, or the
33 distance cited by any standing restraining orders, whichever distance
34 is greater, of the property on which the offender's victim or victims
35 have established residency, or the victim's immediate family mem-
36 bers reside. In cases where the sex offender has maintained the same
37 primary address from before the time of the convicted crime, the
38 provisions under this paragraph will not be upheld.

39 (e) No sex offender designated as a level 3 offender convicted of a
40 sex offense involving a child, or any level 1 or level 2 offender who
41 has been convicted of more than one sex offense involving a child,
42 shall accept employment within 1,000 feet, or the distance cited by
43 any standing restraining orders, whichever distance is greater, of the
44 property on which the offender's victim or victims have established
45 residency, or the victim's immediate family members reside.

46 (f) No sex offender designated as a level 3 offender convicted of a
47 sex offense involving a child, or any level 1 or level 2 offender who
48 has been convicted of more than one sex offense involving a child,
49 shall establish living conditions within, be placed in, or be trans-
50 ferred to any state-owned, operated or funded housing or any facility
51 contracted with the state within 1,000 feet of the property on which
52 any public or private school, licensed day care center, or any other
53 child care facility is located.

54 (g) No sex offender designated as a level 3 offender convicted of
55 a sex offense involving a child, or any level 1 or level 2 offender
56 who has been convicted of more than one sex offense involving a
57 child, shall establish living conditions within, be placed in, or be
58 transferred to any state-owned, operated or funded housing or any
59 facility contracted with the state within 1,000 feet, or the distance
60 cited by any standing restraining orders, whichever distance is
61 greater, of any residence occupied by the offender's victim or vic-
62 tims, or the victim's immediate family.